

BEFORE THE CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

NORTH CLOVER CREEK/COLLINS
COMMUNITY COUNCIL, et al.,

Petitioners,

v.

PIERCE COUNTY,

Respondent,

and

CITY of SUMNER, JOHN MERRIMAN &
WM. MERRIMAN, and MARK BOWMER &
BELINDA BOWMER,

Intervenors.

CASE NO. 10-3-0003c
(North Clover Creek)

ORDER ON MOTIONS

THIS Matter came before the Board on various motions filed by Intervenors Merriman and Bowmer and by the Halmo Petitioners. The Board takes up, first, the motions filed by Merriman and Bowmer and, second, Halmo's motion to supplement the record.

MERRIMAN/BOWMER MOTIONS

Intervenors Merriman and Bowmer are owners of property affected by Pierce County Comprehensive Plan Amendment U-8A. All three petitions challenge Amendment U-8A.¹

¹ See Restated Legal Issues NCC 1, Halmo 1 and FW 1, attached.

1 The Board considers several sets of materials submitted by Intervenor Merriman and
2 Bowmer and refers to these materials generally as "Merriman Motions." At the Prehearing
3 Conference on March 1, Merriman and Bowmer submitted motions requesting dismissal of
4 the challenges to Amendment U-8A based on failure of timely notice and service.² The
5 following day and later that week, Merriman filed motions to separate the U-8A challenges
6 from other amendments for the purpose of dismissal.³ In these motions and attached
7 materials, Merriman asserted that the challenges were factually inaccurate in referring to
8 only one of the two U-8A property owners. On March 26 (the motions deadline for this
9 case), Merriman and Bowmer renewed their motions, including a motion to dismiss and a
10 motion to reinstate Merriman as a respondent.⁴

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12
13 In these motions, Merriman and Bowmer assert:

- 14 a) All three petitions should be dismissed as they relate to Amendment U-8A because
15 Merriman and Bowmer were not notified or served with the petitions;
16 b) Merriman should be reinstated as a respondent rather than an intervenor; and
17 c) the North Clover Creek petition should be dismissed because it falsely refers only to
18 Merriman as U-8A property owner.
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21 The Board received responses from petitioners Halmo and Futurewise⁵ and rebuttals from
22 Merriman and Bowmer.⁶ The rebuttals in particular underscored the failure of any of the
23 Petitioners to identify and serve the Bowmers.
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27 ² Motion to Separate and Motion to Dismiss, March 1, 2010.

28 ³ Request for Dismissal of Petitions against U-8A Amendment, with attachments A-1 to A-6, March 2, 2010;
29 Copies of Request for Dismissal, with attachments D-1 to D-5; March 4, 2010.

30 ⁴ Dispositive Motion to Dismiss, Non-Dispositive Motion, and Additional Information Items A-1 to A-8, March
31 26, 2010.

32 ⁵ Halmo's Response to Motion to Reinstate Respondent Status and Motion to Dismiss All Petitions, April 2,
2010; Futurewise Response to Intervenor's Non-Dispositive Motion to Reinstate Respondent Status and
Dispositive Motion to Dismiss, April 1, 2020.

⁶ Rebuttal, filed by John Merriman, April 16, 2010; Rebuttal, on question of reinstatement as Respondent, filed
by John Merriman, April 16, 2010; Rebuttal, filed by Belinda Bowmer and Mark Bowmer, April 16, 2010.

1
2 Should the Petitions related to Amendment U-8A be dismissed for failure of notice and
3 service on Merriman and Bowmer? NO

4 In their filings, taken all together, Merriman and Bowmer assert that they were entitled to
5 notice and service of the Petitions for Review. Each of the three Petitions challenged
6 Amendment U-8A, the Merriman Map Amendment. Merriman and Bowmer contend that the
7 Petitioners were bound to determine who owned the property subject to Amendment U-8A
8 and serve the petitions on the owners. They assert that the petitions must be dismissed for
9 failure of service, citing WAC 242-02-230. Alternatively, Merriman requests to be reinstated
10 as a Respondent, rather than an Intervenor.
11

12
13 The Growth Management Act allows citizens to challenge certain actions of city, county, or
14 state agencies. The Act states at RCW 36.70A.280(1): "A growth management hearings
15 board shall hear and determine *only* those petitions alleging ... that a *state agency, county,*
16 *or city* planning under this chapter is not in compliance with the requirements of this
17 chapter...." In the present case, the challenged action is Pierce County's adoption of
18 Ordinance No. 2009-71s. Only the County adopted the Ordinance, and the County is
19 therefore the only party necessary to be named as a respondent and served with the
20 petitions for review. As pointed out by Futurewise:
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24 The only possible Respondent in a case before the GMHB is a government
25 entity. The Act specifically limits actions to those naming a "state agency, county,
26 or city planning under this chapter..."⁷
27

28 Similarly, in a Growth Board proceeding, only the *city, county or state agency* can be
29 required to comply with the GMA. The Board's final order in a case determines whether a
30 city or county (not a property owner or neighborhood group) is in compliance with the GMA.
31

32 ⁷ Futurewise Response, at 2.

1 RCW 36.70A.300(1), (3). Thus the petition here is properly directed against Pierce County
2 as the Respondent. As the Halmo petitioners point out, the GMA requires county and city
3 governments to comply with the GMA:

4 It is our position that the County, not [Merriman and Bowmer], took action which
5 has violated, or is inconsistent with, the requirements of the Growth Management
6 Act.⁸

7
8 The Board's rule for service of a petition, in WAC 242-02-230, provides that a copy of the
9 petition "shall be personally served on all other named parties or deposited in the mail and
10 postmarked on or before the date filed with the board." However, the rule goes on to explain
11 how to effect service on a *city, county or state agency*:

12 When a *county* is a party, the county auditor shall be served.... The mayor, city
13 manager, or city clerk shall be served when the *city* is a party. When the *state of*
14 *Washington* is a party, the office of the attorney general shall be served....

15 Thus a GMA petition *must be served on the government agency* that enacted the
16 challenged ordinance or adopted or approved the challenged plan.
17

18
19 The Board has long recognized that the GMA petition system differs in this respect from
20 other kinds of land use lawsuits.⁹ The Board is charged with determining only whether
21 governments have complied with the GMA. In reviewing a petition challenging a
22 comprehensive plan amendment, the Board does not assume any direct authority over
23 landowners or individual parcels. For this reason, there is no requirement that the petition
24 be served on anyone other than the responsible city, county or state agency.¹⁰ However,
25 intervention is liberally granted to affected property owners and neighbors.
26

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28 ⁸ Halmo Response, at 1.

29 ⁹ See e.g., *Pilchuck Newberg Organization v. Snohomish County*, CPSGMHB Case No. 94-3-0018, Order
30 Denying Dispositive Motions (Feb. 1, 1995); *Alberg et al v King County*, CPSGMHB Case No. 95-3-0041, Final
31 Decision and Order (Sept. 13, 1995), at 29-36.

32 ¹⁰ *Buckles v. King County*, 191 F.3d 1127 (9th Cir. 1999) appears to be the only published decision addressing
a property owner's claim that due process requires individualized notice of a petition for review to the Growth
Boards. The Ninth Circuit in *Buckles* rejected the argument that landowners affected by a comprehensive plan

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2 Having considered the submissions of the parties, the Board makes the following **findings**
3 **of fact**. Each of the Petitioners made timely service on Pierce County. North Clover Creek
4 provided courtesy service to John Merriman. The Bowmers were not served by any of the
5 petitioners. The Hearings Board formally notified both John Merriman and the Bowmers in
6 writing of the time and place of the prehearing conference. John Merriman and Belinda
7 Bowmer attended the prehearing conference. At the prehearing conference, without a
8 formal motion but without objection from any party, the Board ruled that Merriman and
9 Bowmer could intervene on the side of the County.
10

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12 The Board **concludes** that the GMA authorizes the Board to hear only challenges to city,
13 county or state agency compliance with the GMA; only the government entity must be
14 notified and served with the petition for review. In the present case, only Pierce County was
15 required to be served. Therefore, there is no basis to dismiss the petitions for lack of notice
16 or failure to serve Merriman and Bowmer. The Intervenor's motion to dismiss on these
17 grounds is **denied**.
18

19
20 Was Merriman named as a Respondent in the North Clover Creek petition? NO

21 The Board finds that Pierce County's comprehensive plan amendment process identified
22 each proposed amendment by a specific number and a name, often the name of a
23 proponent or landowner. Ordinance No. 2009-71s, Exhibit B, pages 2 and 12, identifies
24 Amendment U-8A as "U-8a Merriman." In Exhibit B page 118, the Map Amendment is
25 labeled "Amendment U-8a, William Merriman and John Merriman."
26

27
28 The caption of the North Clover Creek petition for review reads:
29

30 North Clover Creek/Collins
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32 provision were indispensable parties to a Growth Board appeal of that provision. Thus the Court by implication rejected the argument that the landowners had a right to individualized notice of such an appeal.

1 Community Council, and Audrey
2 Chase, Petitioners

3 v.

4 Pierce County, Respondent, re:
5 John Merriman, U-8A and U-8B.

6 This caption clearly identifies Pierce County as the Respondent and then indicates that the
7 petition is limited to one element of the challenged ordinance – “*re: John Merriman, U-8A*
8 *and U-8B.*”

9
10 The Board **finds and concludes** that North Clover Creek’s use of John Merriman’s name in
11 the caption simply *identifies the particular amendment* being challenged. This does not
12 make John Merriman a respondent. Merriman’s motion to reinstate respondent status is
13 **denied.**

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16 *Should one or all the Petitions be dismissed because of misstatements of fact?* NO

17 In the Dispositive Motion, Merriman contends that Audrey Chase deliberately falsified the
18 North Clover Creek petition by referring to only one of the two U-8A property owners.
19 Specifically, Merriman asserts that Audrey Chase knew the Bowmers were owners of a
20 portion of the property affected by the U-8a amendment but failed to include that fact in the
21 North Clover Creek petition. Merriman argues that the “spot zone” allegations of the North
22 Clover Creek petition are based on this single-owner falsehood.

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25 In the Rebuttals, Merriman and Bowmer underscore their request for dismissal based on the
26 failure of any of the Petitioners to mention the Bowmers. As the Board stated above, GMA
27 cases are challenges to the enactments of cities and counties. In this case, Pierce County’s
28 adoption of Amendment U-8A is being challenged. Neither the County nor any of the
29 Petitioners are required to identify property owners and notify or serve them.
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1 Further, Merriman and Bowmer are mistaken in thinking that “spot zoning” necessarily
2 means zoning for just one parcel or just one property owner. Indeed, spot zoning can
3 include several parcels or owners. However, the “spot zone” issue has been withdrawn, and
4 therefore the Board will not address it. RCW 36.70A.290(1).
5

6 The Board finds that *Merriman’s objections have been fully remedied*. Merriman raised this
7 objection at the prehearing conference and in his March 2 filings. In response, the legal
8 issues in the case were restated in the Prehearing Order.¹¹ The Prehearing Order indicates
9 that the “spot-zone” issue (NCC Issue 1e) has been removed. In fact, it was withdrawn by
10 the petitioners. Thus, contrary to Merriman and Bowmer’s concerns, there is no longer any
11 allegation of spot-zoning in this case. The reference to John Merriman as property owner in
12 North Clover Creek Petition at 4(a) was also deleted in the restated legal issues.¹²
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14

15 In short, the **Intervenors’ objections have been addressed and fully remedied**. The
16 Board has restated the legal issues. No further remedy is available or necessary. There are
17 no grounds for dismissal, and the motion to dismiss must be **denied**.
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20 Conclusion

21 Having fully considered the Intervenors’ motions and the submittals of the parties, the
22 motions of Intervenors’ Merriman and Bowmer are **denied**.
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29 ¹¹ The Restated Legal Issues are attached to this order.

30 ¹² The Prehearing Order makes clear that there may be errors of fact in the stated Legal Issues: “The Board
31 recognizes that some of the Legal Issues as stated may include argument and assertions of facts that are not
32 in evidence before the Board. These arguments and factual assertions may or may not be borne out when
exhibits and briefs are filed; however, at this stage of the proceeding, the Board is primarily interested in which
section(s) of the GMA the County has allegedly not complied with.”

HALMO MOTION TO SUPPLEMENT

The *Halmo* petitioners move to supplement the record with three exhibits:¹³

- Proposed Supplemental Exhibit 1 – 17 photographs of school signs in the Graham Community Plan Area
- Proposed Supplemental Exhibit 2 – 15 photographs of school signs in other Pierce County community plan areas
- Proposed Supplemental Exhibit 3 – Wachtel, J. *Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs*, Final Report, April 2009.

Pierce County objected to the supplementation,¹⁴ and Halmo replied.¹⁵

RCW 36.70A.290(4) provides that the board shall base its decision on the record developed by the challenged jurisdiction “supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.”

Proposed Supplemental Exhibits 1 and 2.

Halmo asserts that inclusion of the photographs will provide the Board with a useful visual understanding of current school signboards – Exhibit 1 containing photos from Bethel Schools in the Graham Community Plan Area and Exhibit 2 containing photos from schools located in other Pierce County community plan areas.

The Board notes that the County’s legislative record is of necessity primarily a paper record. But the County Council members also bring to their deliberations a “visual record” arising

¹³ Motion to Supplement the Record, with 3 proposed supplemental exhibits, March 26, 2010.

¹⁴ Respondent Pierce County’s Response in Opposition to Petitioner Halmo’s Motion to Supplement the Record, April 5, 2010.

¹⁵ Petitioner’s Reply to Respondent’s Response Opposing Petitioner’s Motion to Supplement the Record, April 14, 2010.

1 out of their day-to-day familiarity with all parts of the County. The photographs proffered by
2 Halmo here appear to the Board to supplement the County's legislative record with visuals
3 that must be familiar to the County Council members. Pierce County argues that photos
4 submitted by Bethel School District in its application should suffice.¹⁶ However, these photos
5 (a) are illegible as reproduced and (b) are not schools in the Graham Community Plan area.
6 Pierce County does not object that Halmo's photographs are misleading or inaccurate
7 depictions.¹⁷ Rather, the County suggests that no photographs are needed because the
8 Board is familiar with these kinds of school signs.
9

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11 The Board finds that the Halmo photographs provide *illustrative* material that may be of
12 substantial assistance to the Board in rendering its decision. Indeed, it seems to the Board
13 that the visuals may be as useful to illustrate the County's position as Halmo's.
14

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16 *Proposed Supplemental Exhibit 3.*

17 The Wachtel report, *Safety Impacts of the Emerging Digital Display Technology for Outdoor*
18 *Advertising Signs*, is an authoritative study sponsored by the Federal Highway
19 Administration, National Cooperative Highway Research Program, and the American
20 Association of State Highway and Transportation Officials - AASHTO. This study was not
21 reviewed by Pierce County in enacting Amendment C-3 and is not part of the County's
22 record. However, the Board may take official notice of "technical or scientific" information
23 and government-sponsored documents.¹⁸ For example, the Board may make use of a law
24 review article, a planning journal, or codes and standards of other jurisdictions in formulating
25 its decisions, whether or not that material was in the county's record.
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30 ¹⁶ County Response, at 3.

31 ¹⁷ Compare, *Hood Canal v Kitsap County*, CPSGMHB Case No. 06-3-0012c, Order on Motions (May 8, 2006),
at 2-4.

32 ¹⁸ WAC 242-02-660, -670.

1 The Wachtel study indicates that electronic signs of various kinds present a significant
2 distraction to motorists. The level of distraction varies with the age and experience of the
3 driver, the amount of visual clutter in the road environment, the size, brightness, color,
4 angle, motion and complexity of the sign, and in particular, features such as scrolling and
5 message sequencing. The study recommends that local and state regulations should
6 prohibit digital billboards where traffic patterns require focused driver attention and should
7 provide clear standards for lighting, message length, and other features.
8

9
10 The County points out that the Wachtel study is expressly concerned with regulation of off-
11 premises electronic billboards, not the kind of on-premise signs at issue here.¹⁹ Halmo
12 responds that the same driver distraction factors evidently apply.²⁰
13

14 In the recent case of *Seattle Shellfish et al v Pierce County*, CPSGMHB Case No. 09-3-
15 0010c, Order on Motions (Oct. 13, 2009), the Board declined to supplement the record with
16 two federal studies that were issued after the County's adoption of a challenged ordinance.
17 The disputed issue in that case was whether the County had failed to comply with the
18 Shoreline Management Act requirement to consult with federal agencies with specialized
19 expertise. Seattle Shellfish sought to introduce the two studies as evidence that consultation
20 with the agencies might have led to a different regulatory outcome. The Board determined
21 that the federal studies were not commenced until after the County's action and thus the
22 introduction of the studies would not assist the Board in its decision concerning the
23 consultation requirement.²¹
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27 In the present case, by contrast, the purpose of the supplementation is simply to provide the
28 Board with authoritative background information on traffic safety impacts of digital billboards.
29

30 ¹⁹ County Response, at 3-4.

31 ²⁰ Halmo Reply, at 3.

32 ²¹ *Id.* at 3-4.

1
2 Will the Wachtel study provide necessary information or substantial assistance to the Board
3 in its decision here? At this stage of the briefing in the present case, the Board cannot
4 determine whether the digital billboard safety study will be “necessary or of substantial
5 assistance” to its decision. The Board notes that to the extent electronic signs – whether on
6 or off-premises – are already permitted in urban areas of the County, where visual clutter
7 and traffic patterns make such sign especially distracting, the Wachtel study hardly appears
8 to assist in determining appropriate standards for rural areas.
9

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11 It appears to the Board that the traffic safety effects of electronic billboards in the rural area
12 as compared to the urban area are not so relevant to GMA compliance as the question of
13 consistency with rural character. The burden is on the Halmo petitioners to demonstrate that
14 the County Council’s action violates the GMA, not merely that it is bad public policy.
15 Certainly for the parties to engage in a battle of one-line quotes from the Wachtel study
16 would not be helpful to the Board’s decision. However, the Wachtel study “may be offered”
17 and the Board will rule on the supplementation question when all the briefing on the merits
18 has been submitted.
19
20

21 **Conclusion**

22 Halmo Supplemental Exhibits 1 and 2 are **admitted**. Proposed Supplemental Exhibit 3 **may**
23 **be offered**. If the Halmo petitioners seek to use this document in support of their Prehearing
24 Brief, they should offer relevant portions as attachments; the County may file any objections
25 in its response, and the Board will make its ruling at the beginning of the Hearing on the
26 Merits.
27
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29 **ORDER**

30 Based on the submissions of the parties, the GMA, the Board’s Rules of Practice and
31 Procedure, prior Board decisions, and having deliberated on the matter, the Board orders:
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- The motions of Intervenors Merriman and Bowmer to dismiss or to reinstate as Respondent are **denied** as set forth above.
- The motion of Halmo Petitioner to supplement the record is **granted in part** as set forth above.

DATED this 27th day of April, 2010.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Margaret A. Pageler, Presiding Officer

David O. Earling, Board Member

RESTATED LEGAL ISSUES
(Prehearing Order, March 5, 2010)

NORTH CLOVER CREEK

NCC 1. Did Pierce County's adoption of *Amendment U-8a*²² to Ordinance No. 2009-71s violate the goals and requirements of the GMA as follows:

NCC 1.a. Is the challenged action in violation of, or inconsistent with, RCW 36.70A.215, Pierce County Development Regulation 19A.30.010 (LU-UGA Objective 6), and 19C.10PCC in that the UGA amendment is inconsistent with the Buildable Lands Report because there is not a need for additional urban residential lands?

²² North Clover Creek's Clarification of Issues added a challenge to Amendment No. U-7. North Clover Creek's Petition for Review challenged only Amendment U-8. The Presiding Officer at the prehearing conference gave permission for restatements to clarify the specific GMA provision or Comprehensive Plan element relied on, not to broaden the subject matter of any Petitioner's challenge. Therefore Amendment U-7 is not included in the Board's statement of the Issues.

(citing also RCW 36.70A.040, .070, .110, .115, .210, .130, GMA Goals 1,2,5,9, 10, and 12, PCC 19C.10.055, PCC 19C.10.060B, Countywide Planning Policy for Urban Growth Areas 1.2 and 2.2, and the Countywide Planning Policies related to buildable Lands and UGA boundary amendments.)²³

NCC 1.b. Is the challenged action in violation of, or inconsistent with, Pierce County Mid-County Community Plan Standard 1.5.1 and the GMA in that Pierce County failed to comply with the County's "no net loss policy" for the Rural Separator designation?

NCC 1.c. Is the challenged action and the County's failure to preserve natural neighborhoods and maintain the Urban Growth Boundary on Brookdale Road, a distinct major arterial, in violation of, or inconsistent with, Countywide Planning Policies, County Comprehensive Plan provisions and the GMA? (citing CPP Urban Growth Areas 2.1 and 2.2, RCW 36.70A.011, .110, .210 and the Plan implementation requirements of .040(3); RCW 36.93.180; and the objectives, principles and criteria of PCC 19A.40.010, .020, .030, PCC 19A.30.010, .055, .100, and PCC 19C.10.055, PCC 19C.10, PCC19C.10.060B.)

NCC 1.d. Did the County fail to comply with the notice and public participation requirements of RCW 36.70A. 020(11), .035, .130, and .140, PCC19C.10.055, and County notice requirements when it suddenly and summarily adopted a substitute zone without compliance with Pierce County's "no net loss policy" for Rural Separator?

NCC 1.e. (Removed)

NCC 1.f. Is the challenged action in violation of, or inconsistent with, the GMA and County Comprehensive Plan in that it creates a parcel by parcel development pattern, increases the likelihood of incompatible uses and densities, and promotes urban densities in an area not planned for urban services? (citing RCW 36.70A.011, .040, .060, .070, .110, .115, .130, and .210, GMA Goals 1, 2, 5, 8, 9, 10, 12; the Plan implementation requirements of RCW 36.70A.040(3), and the objectives, principles, and criteria of PCC 19A.40.010, .020, .030, 19A.30.010, 055, 100, and PCC 19C.10.055, PCC 19C.10, PCC 19C.10.060B.)

²³ At the Prehearing Conference, the County asked the Petitioners to provide more specific reference to the elements of the GMA and County plans that they intended to rely on. Petitioner North Clover Creek restated their issues to include numerous references. The Board places these additional references in parentheses after each issue question.

1 **NCC 1.g.** Is the challenged action in violation of, or inconsistent with, previous GMA
2 Board decisions against Pierce County, including the *Brink* case, 02-3-0010c, in that
3 the County's action is inconsistent with the *Brink* decision, including the fact that the
4 5.2 acre UGA amendment will be zoned Residential Resource within the MSF
5 designation, but is not part of a large unified critical area?

6 **HALMO²⁴**

7 **Halmo 1.** Did Pierce County's adoption of *Amendment U-8a* to Ordinance No. 2009-71s
8 violate the goals and requirements of the GMA as follows:

9 **Halmo 1.a.** Does the Amendment fail to comply with WAC 365-195-335²⁵ and the
10 County's Comprehensive Plan by expanding the Urban Growth Area for residential
11 lands when the existing UGA has excess capacity? (citing County's Comprehensive
12 Plan 19A.30 LU-UGA Objectives 1, 3, 6 and 19A.140 LU-CO Objectives 44 through
13 47.)

14 **Halmo 1.b.** Does the Amendment fail to comply with Section 19C.10.055 F of the
15 County's Comprehensive Plan Procedures for Amendments to the Comprehensive
16 Plan as well as the Mid-County Community Plan by not adopting a required
17 companion amendment to ensure "no net loss" of Rural Separator land? (citing Mid-
18 County Community Plan Land Use Policies [Objectives, Principles, Standards], Rural
19 Residential, Objective 1, Principal 5 and its Standards.)

20 **Halmo 1.c.** Does the Amendment fail to comply with Pierce County Countywide
21 Planning Policy UGA-2.2 (Ordinance 2005-52s) and Section 19C.20.040 Boundaries
22 of the County's Comprehensive Plan Procedures by not following readily identifiable
23 boundary features for Rural Separator lands?

24 **Halmo 1.d.** Is the Amendment inconsistent with RCW 36.070A.030 (15), RCW
25 36.070A.070, WAC 365-195-330, and the Mid-County Community Plan requirements
26 to preserve the community's rural character? (citing Mid-County Community Plan
27 Land Use Policies, [Objectives, Principles, Standards] Rural Residential, Intent and
28 Objective 1 with its Principles and Standards as well as Rural Commercial, Intent and

29 ²⁴ The Restatement of Legal Issues submitted by Halmo Petitioners largely responded to the County's request
30 for a more definite statement of the specific elements of the County's plan and policies relied on. The Board
31 places these references in parentheses after each issue question.

32 ²⁵ The Department of Commerce has adopted a new set of Growth Management Act guidelines, now at
Chapter 365-196 WAC. The new guidelines became effective February 19, 2010. For purposes of this case,
the Board applies the old guidelines, which were in effect at the time of County adoption of Ordinance 2009-
71s.

Objective 4 with its Principles 1 and 2; Community Character and Design Element, Rural Character, Objective 17.)

Halmo 2. Did Pierce County's adoption of *Amendment C-3* (Signs Graham) to Ordinance No. 2009-71s violate the goals and requirements of the GMA as follows:

Halmo 2.a. Does the Amendment fail to comply with the RCW 36.70A.20 (10), the Act's environmental protection goal, RCW 36.70A.030 (15), RCW 36.70A.070 (5), WAC 365-195-330, Pierce County Comprehensive Plan Goals 19A.20.050, Pierce County Comprehensive Plan 19A.40, and the Graham Community Plan's Community Character and Design and Natural Environment Elements because it is inconsistent in preserving rural lands, in protecting the rural character, in protecting visual landscapes, and in assuring visual compatibility with surrounding rural areas through adequate signage control? (citing also Pierce County Comprehensive Plan 19A.40.030 RUR Objective 3 and .040 RUR Objective 4, and the Graham Community Plan's Community Character and Design Element (Goal with Objectives, Principles, Standards -- Objective 14 Principle 1 and Principle 11; Design Intent -- with Objective 15 Principle 3; Objective 19, Principle 6; Signs -- with Intent and all of Objective 20 and its Principles and Standards; Viewsheds and Aesthetics -- Intent and Objective 22, Principles 1, 6, 7, and 9) and Natural Environment Element (Goal and Objective 27)

Halmo 2.b. Does the Amendment take action inconsistent with the RCW 36.70A.020(2), the GMA sprawl reduction goal, and Pierce County Comprehensive Plan 19A.110 because it results in less stringent signage controls affecting only the largely rural Graham Community Plan area? (citing Pierce County Comprehensive Plan 19A.110.020 CO Objectives 2.A.2 and A.3 and 19A.110.040 CO Objectives 4 and 5.)

Halmo 2.c. Does the Amendment lessen support for the substantial, legitimate government interest to protect public traffic safety along highways and roadways by increasing distracting sign lighting and glare, thus making it inconsistent with the a basic tenant of the Growth Management Act that land use actions should protect the public interest? (citing WAC 365-195-325 which conforms with and is consistent with the State's transportation goal policies RCW 47.04.280 and its companion requirements RCW 47.04.070, RCW 47.42.020 (7) and (8), RCW 47.42, RCW 47.36.180, and WAC 468-66-050)

FUTUREWISE²⁶

FW 1. By adopting *Amendment Nos. U-7 and U-8* to Ordinance No. 2009-71s, and otherwise by expanding the County's urban growth areas beyond that needed to accommodate the County's adopted population projection, has Pierce County violated GMA Planning Goals 1, 2, 5, 9, 10, and 12 and GMA Sections .040, .070, .110, .115, and .130?

FW 2. By adopting *Amendment No. T-6*, UGA expansion criteria, to Ordinance No. 2009-71s, without protections for working farms, specifically failing to prohibit including agricultural lands of long-term commercial significance within urban growth areas, and other violations of the Growth Management Act, has Pierce County failed to adopt comprehensive plan provisions and development regulations to conserve natural resource lands and protect them from incompatible development, failed to comply with the GMA requirements for urban growth areas, and otherwise failed to comply with GMA Planning Goals 1, 2, 5, 8, 9, 10, and 12 and with GMA Sections .040, .050, .060, .070, .110, .130, .170, and .177?

FW 3. By adopting *Amendment No. M-23*, Monarch Custom Homes, which de-designates and rezones 20 acres from ALR to Rural 10, has Pierce County failed to adopt comprehensive plan provisions and development regulations to conserve natural resource lands and protect them from incompatible development and otherwise failed to comply with GMA Planning Goals 1, 2, 5, 8, 9, 10, and 12 and with GMA Sections .040, .050, .060, .070, .130, .170, .172, and .177?

FW 4. By adopting *Amendment No. U-5*, to re-designate 80 acres from ARL and R20 to EC and add the land to the urban growth area, has Pierce County failed to adopt comprehensive plan provisions and development regulations to conserve natural resource lands and protect them from incompatible development, expanded the urban growth area beyond what is needed to accommodate the county's adopted population projections, and otherwise failed to comply with GMA Planning Goals 1, 2, 5, 8, 9, 10, and 12 and with GMA Sections .040, .050, .060, .070, .110, .115, .130, .170, .172, and .177?

²⁶ At the Prehearing Conference, Futurewise was asked to clarify several of its legal issues. Futurewise promptly provided a Clarification of Issue Statement responding to the questions raised at the conference, but not resulting in any restatement of its issues.